mitted to confess. Then if the criminal is held beyond a short while before being taken before a magistrate, a conviction would be reversed on constitutional grounds. Many persons stand ready to assist the offender in protecting his constitutional rights through all the courts of the land.

"While society is weeping over the criminals," YARBOROUGH said, "it is showing no such concern, indeed no concern, for the victims of his crime. Society is brutal towards the victims of crime, not against the criminals."

DEPARTMENT OF ALASKA AMERICAN LEGION ENDORSES COLD WAR GI BILL

Mr. YARBOROUGH. Mr. President, the Department of Alaska American Legion held its State convention at Sitka, Alaska, on June 16 through 19, 1965. This department has a proud history. The present legislative director of the American Legion headquarters here in Washington, Harold E. Stringer, comes from the American Legion Department of Alaska.

At its recent statewide convention, the Alaskan department adopted a resolution endorsing the cold war GI bill, and specifically Senate bill 9, now pending on the Senate Calendar. I ask unanimous consent that the resolution be printed at this point in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

RESOLUTION 65–23

Resolved, That the American Legion, Department of Alaska, in regular convention assembled at Sitka, Alaska, June 16–19, 1965, does hereby endorse S. 9 (cold war GI bill) now pending in the Senate of the United States; and be it further

Resolved, That a copy of this resolution be forwarded to Senator RALPH YARBOROUGH, chairman of the Senate Subcommittee on Veterans' Affairs, each member of congressional delegation from Alaska, and to the national adjutant of the American Legion.

OLDER AMERICANS ACT OF 1965

Mr. SMATHERS. Mr. President, today final congressional approval was given H.R. 3708, entitled the "Older Americans Act of 1965." I am confident that I speak for the overwhelming majority of the Senate Special Committee on Aging in expressing pleasure and satisfaction over passage by Congress of this measure. I myself have sponsored a proposal which has many features in common with this bill, having introduced S. 1357 in 1963, which I reintroduced early this year as S. 991. The Older Americans Act will authorize several Federal grant programs which would have been authorized by enactment of my bill. For this reason, I am happy to join the sponsors of the Older Americans Act of 1965 in celebrating final approval by Congress of this measure.

It will do a tremendous amount for the elderly of our Nation at comparatively small cost. It will greatly strengthen State and local agencies for the aging and will provide funds needed for community planning and coordination of programs for older citizens. It will provide funds needed for research and demonstration projects and improve our knowledge of effective methods of meeting the needs of our Nation's elderly. It will increase the number of trained personnel to serve the Nation's elderly, for lack of sufficient numbers of which many activities and programs for the elderly are badly handicapped.

Enactment of this measure will implement recommendations of many knowledgeable witnesses at hearings of the Senate Special Committee on Aging and its subcommittees. Those who have studied the problems and opportunities of America's elderly and who are qualified to speak authoritatively have long advocated programs of these types.

This bill will do all these things at the cost of only a few million dollars a year. It represents a sound investment in improving the later years of not only the senior citizens of today but also those of younger Americans who hope to live long enough to be tomorrow's senior citizens. The President should give it his prompt, enthusiastic approval.

ORDER OF BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

Mr. LONG of Louisiana. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LONG of Louisiana. Mr. President, I ask unanimous consent that further proceedings under the quorum call be terminated.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRESIDENTIAL INABILITY AND VACANCIES IN THE OFFICE OF VICE PRESIDENT—CONFERENCE REPORT

The PRESIDING OFFICER. Under the unanimous-consent agreement, the Chair lays before the Senate the pending business, which the clerk will state.

The LEGISLATIVE CLERK. Report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the joint resolution (S.J. Res. 1) proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice-Presidency and to cases where the President is unable to discharge the powers and duties of his office.

The Senate resumed the consideration of the report.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAYH. It is my understanding that under the unanimous consent agreement adopted by the Senate earlier, the time is to be controlled, 1 hour by the distinguished Senator from Tennessee [Mr. GORE] and 1 hour by me.

The PRESIDING OFFICER. Under the agreement, there is a limitation of 2 hours, 1 hour on each side.

Who yields time?

Mr. BAYH. Mr. President, the Senator from Tennessee [Mr. GORE] has a prepared speech. I do not desire to engage in colloquy.

I will yield myself just 2 minutes to say that this has been a much discussed subject over the 187 years of our history. The record over the past 187 years is replete with studies by the Congress, the Senate, and individuals concerned.

The purpose of the constitutional amendment, the conference report on which we are now called to approve, is to provide a means which we have devised by which the Vice President will be able to perform the powers and duties of the office of the President if the President is unable to do so.

Mr. President, in my estimation, it is impossible to devise a bill or a constitutional amendment which can cover all the contingencies in this particular, complicated field, but this Congress has gone further than any of its predecessors toward meeting the problem.

On the last day of the debate I went into some detail to specify the details of the report. I do not believe it is necessary to do so again today, unless some of my colleagues wish to question me or engage in colloquy.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. BAYH. I am glad to yield to the Senator from New York, who has contributed so much to bringing us in the position we now find ourselves.

Mr. JAVITS. I am gratified by the statement of the Senator. I read the RECORD over the weekend and thought a great deal about the subject over the weekend and thought again about the relatively close questions which the Senator from Tennessee, the Senator from Indiana, I, and other Senators discussed.

I had the good fortune to read in one of the New York newspapers, the Herald Tribune, a fine editorial on the subject, which, if the Senator will permit me, I ask unanimous consent to have printed at this point in the RECORD as a part of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

CLARIFYING THE PRESIDENTIAL SUCCESSION

Hopes that this session of Congress would see the beginning of the end of a very serious hiatus in the present laws governing the succession to the Presidency—what is to be done if a President still lives, but is incapacitated from serving—have been discouraged. The Senate had passed a proposed amendment covering this contingency; the House passed a somewhat different version. A conference committee reconciled the two, and its solution was accepted by the House. Then a sudden uprising by some Democratic Senators (including our own ROBERT KENNEDY) saw flaws in the amendment and obtained a delay in the Senate vote until tomorrow.

It is to be hoped that the Senate will weigh the theoretical objections put forward by the amendment's opponents against the very real dangers that now exist. The amendment tries manfully to cover all contingencies, but it obviously cannot prevent a group, injecting both the administration and Con-

gress, from attempting to subvert the spirit of our institutions and affronting the good sense of the American people by seeking to have a sane and healthy President declared incapable of performing his duties. If such a desperate situation should arise, the lack of the proposed amendment would not stop the conspirators. It did not arrest the attempt to oust President Andrew Johnson by impeachment, for example—which failed by only one vote.

But the amendment would foreclose the possibility of another such constitutional nightmare as occurred when President Wilson was felled by a stroke and the country—to all appearances—was governed by his wife. This portion of the amendment is, in other words, about as sound as human forethought can make it. It relies, to some extent, upon the integrity and good sense of the men elected to high office by the American people. But so does everything else in our Constitution.

In other respects, too, the amendment makes needed reforms. It provides for filling a Vice-Presidential vacancy by Presidential appointment, confirmed by Congress. This is a better arrangement than the various succession acts passed by Congress since 1792, and fleshes out the 20th amendment, which deals chiefly with the problems arising between the election of a President and his inauguration. The amendment is good and necessary. It will require months to acquire approval by the necessary two-thirds of the States and should not be further delayed by counsels of impossible perfection nor by fears of what would be, in fact, revolution.

Mr. JAVITS. Mr. President, this is a tremendously important measure, a historic development in the field of Presidential succession, and we have spent a great amount of time working it out in detail. Senators who have raised questions about the matter have been statesmenlike about it and have not necessarily said that they would vote against it.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BAYH. I yield 1 minute to the Senator from New York.

Mr. JAVITS. We all know that in many areas of legislation, especially in the field of constitutional amendments, we cannot spell out all the details. If an attempt to do so is made, we get into more trouble than if an effort was not made and we leave it open to further implementation.

What we discussed about the exclusivity of action of a body provided for by Congress would properly be a subject of legislation. If Congress chose not to act, it would be making a choice that the machinery provided for in the amendment should operate.

The argument that not everything is "buttoned down" by the proposed amendment is not, in my judgment, persuasive. We should not "monkey around" with the amendment to provide for something which could be taken care of by legislation by Congress.

There are many occurrences which are tantamount to revolution which could take place to immobilize our Government. Suppose the Senate and the House should refuse to approve any appropriations for the carrying on of the Government. It would immobilize us——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BAYH. I yield 1 minute to the Senator from New York.

Mr. JAVITS. That would immobilize us as much as would be the case if, contrary to acting in good faith, Congress chose not to legislate in the utilization of the amendment.

So, after further deep consideration of the matter, I have come to the conclusion that notwithstanding the questions I expressed, which were in the form of exploratory questions, we have come as far as Congress can go, as the saying is, and I shall vote to approve the conference report.

Mr. BAYH. I thank the Senator. I believe that the colloquy that we had, I, being in charge of the conference report, was helpful in the last discussion.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GORE. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum, and that the time be equally divided.

Mr. BAYH. Mr. President, I think this is unnecessary. If the Senator wishes to take it out of his own time——

Mr. GORE. Mr. President, I withdraw the request.

Mr. President, I suggest the absence of a quorum, and ask unanimous consent that the time be not charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered, and the clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

[No. 163 Leg.]

Allott	Inouye	Muskie
Anderson	Jackson	Pearson
Bass	Javits	Pell
Bayh	Jordan, Idaho	Proxmire
Boggs	Kennedy, N.Y.	Ribicoff
Burdick	Long, La.	Robertson
Church	McCarthy	Smith
Clark	McGovern	Sparkman
Dirksen	McNamara	Stennis
Ervin	Metcalf	Symington
Gore	Monroney	Talmadge
Harris	Morton	Young, N. Dak.
Hill	Moss	
Holland	Mundt	

The PRESIDING OFFICER. A quorum is not present.

Mr. LONG of Louisiana. I announce that the Senator from Nevada [Mr. BIBLE], the Senator from Louisiana [Mr. ELLENDER], the Senator from Nevada [Mr. CANNON], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from North Carolina [Mr. JORDAN], the Senator from Missouri [Mr. LONG], the Senator from Washington [Mr. MAGNUSON], the Senator from Montana [Mr. MANSFIELD], the Senator from New Mexico [Mr. MONTOYA], the Senator from Oregon [Mrs. NEUBERGER], the Senator from West Virginia [Mr. RANDOLPH] and the Senator from Oregon [Mr. MORSE] are absent on official business.

I also announce that the Senator from Alaska [Mr. BARTLETT], the Senator from Virginia [Mr. BYRD], the Senator from Mississippi [Mr. EASTLAND], and the Senator from Indiana [Mr. HARTKE] are absent on official business.

Mr. KUCHEL. I announce that the Senator from Vermont [Mr. AIKEN], the Senator from Colorado [Mr. DOMINICK], the Senator from Nebraska [Mr. HRUSKA], and the Senator from California [Mr. MURPHY] are absent on official business.

The Senator from Utah [Mr. BENNETT], the Senator from Kansas [Mr. CARLSON], the Senator from New Hampshire [Mr. COTTON], the Senator from Hawaii [Mr. FONG], the Senator from Massachusetts [Mr. SALTONSTALL], and the Senator from Wyoming [Mr. SIMPSON] are necessarily absent.

Mr. BAYH. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Indiana.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After a little delay Mr. BREWSTER, Mr. BYRD of West Virginia, Mr. CASE, Mr. COOPER, Mr. CURTIS, Mr. DODD, Mr. DOUGLAS, Mr. FANNIN, Mr. GRUENING, Mr. HART, Mr. HAYDEN, Mr. HICKENLOOPER, Mr. KENNEDY of Massachusetts, Mr. KUCHEL, Mr. LAUSCHE, Mr. MCCLELLAN, Mr. MCGEE, Mr. MCINTYRE, Mr. MILLER, Mr. MONDALE, Mr. NELSON, Mr. PASTORE, Mr. PROUTY, Mr. RUSSELL of South Carolina, Mr. RUSSELL of Georgia, Mr. SCOTT, Mr. SMATHERS, Mr. THURMOND, Mr. TOWER, Mr. TYDINGS, Mr. WILLIAMS of New Jersey, Mr. WILLIAMS of Delaware, Mr. YARBOROUGH, and Mr. YOUNG of Ohio entered the Chamber and answered to their names.

The PRESIDING OFFICER (Mr. KENNEDY of Massachusetts in the chair). A quorum is present.

Who yields time?

Mr. GORE. Mr. President, I yield 15 minutes to the senior Senator from Minnesota.

Mr. MCCARTHY. Mr. President, I believe that the Senate acted wisely in putting off action on the conference report for a few days so that we could carefully examine the language in the proposed amendment and so that all Senators, rather than the four or five who participated in the discussion last week, might be fully aware and informed as to the committee interpretation and what would then be the congressional interpretation of what the proposed amendment to the Constitution would actually mean.

I note again that we are not enacting a statute, something which we could change in this Congress or in any subsequent Congress. We are acting on a constitutional amendment which would establish the procedure for the indefinite future.

I have serious reservations about more than the language of the amendment. I have very serious reservations about the substance of the amendment itself. It was my view when the question of presidential disability and vice-presidential succession was raised that there was sufficient authority in the Constitution to permit Congress to proceed by statute.

Paragraph 6, section 1, of article II of the Constitution gives Congress power to legislate in the area of presidential disability and of succession of a Vice

President. This section of the Constitution reads:

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

It is my judgment that we could act by statute to meet both the problem of succession and disability. There are constitutional authorities who feel that we have power to act in case of a vacancy in the vice-presidency. However, there is some question as to our ability to act in case of disability.

I am willing to abide by the judgment of those who thought we needed a constitutional amendment. It was my opinion that the amendment should be a simple one and should make clear the right and authority of Congress to act by statute.

This was the opinion of Deputy Attorney General Katzenbach when he testified before the committee in 1963 and in his statement submitted to the committee in 1964. He asked for a simple constitutional amendment; and, following that, for action on the part of Congress to spell out the procedures by which inability might be determined and also by which the commencement and termination of any inability would be determined.

This is not the issue involved today. Congressional committees, in both the Senate and House, have considered, I am sure, the possibility of a simple amendment to leave the way open to proceed under statute but they have not approved this method.

At this time, we are preparing to take what will probably be final action or, at least, the last chance to review the proposed amendment.

It has been argued that State legislatures would give a thorough review to the matter. We were informed last week that one State legislature was holding up action until after Congress had acted on the matter so that it would be the first State legislature to ratify the measure. It may be that the State legislature studied the matter and is fully informed as to the amendment. However, I have very grave doubts that this is so. I believe that after Congress acts on the matter, ratification by the States will be almost routine.

Mr. GORE. Mr. President, will the Senator yield?

Mr. McCARTHY. I yield.

Mr. GORE. Mr. President, I wonder if the able Senator believes that the members of the legislature which was awaiting the adoption of the conference report by the Senate in order to be the first State to ratify the amendment could have had an opportunity to read the conference report and determine that the conferees had added certain words to the language. Two of the words were "pro tempore." Another was "either," and the other word was "of."

The conference report did relate that minor changes in language had been made. However, I wonder if the Senator believes that the insertion of the word "either" in the Constitution of the United States, having to do with two bodies, either of which, under the terms of the pending amendment, would play a part in the declaration of presidential disability is a minor matter, and if the State legislature to which the Senator referred was aware of this fact.

Mr. McCARTHY. Mr. President, I believe that it could very well be a most serious matter. Certainly, the language of the amendment as sent to conference would be preferable to this language.

I know that the Senator from Tennessee has given much study to the meaning of the words and the application of the disjunctive alternative of "either/or" in this case.

The Senator will speak on that at some length later today. I should say that we are writing new meaning into the word "either," and that if we were to approve the draft which is before us from the conferees, we would be ignoring every treatise of grammar in which it is pointed out that if we use the word "either/or," we are providing a choice. They are alternatives. One does not include the other. We ought to use words in their logical meaning when we write them into the Constitution of the United States.

I had hoped that Senators who were handling the matter would agree to return to conference. I believe that the matter could have been cleared up in a 4- or 5-minute conference with Representatives of the House. The word "either" appears to have been dropped into the amendment almost by inadvertence. It was not used as a result of carefully considered judgment. It is not a word that was weighed or was subject to any prolonged discussion in conference.

I hope that the Senate will give consideration to the possibility of what I think might create great confusion when and if this amendment is ever put to the test. If such an occasion should arise, it could be at a time when the entire constitutional structure of the United States would be subject to its most severe test in history.

The question of having two Presidents, each of whom desires to perform the duties of office, and the question of having two cabinets or of trying to determine when the functions of one Cabinet came to an end, might be impossible of solution. The President could end the term of office of the members of the Cabinet with a mere declaration. There would be no way to determine whether they could participate in the making of the judgment provided in the proposed amendment.

It is my opinion that the Vice President should have been excluded in any case. This question has been considered by the committee. The committee has decided that the Vice President should be the key man.

No one, under this amendment, can take action with reference to the inability or disability of the President unless such action has the concurrence of the Vice President. The procedure which is provided by the Constitution for impeachment provides for action by the House of Representatives and the Senate. I believe that, as elective officials of the country, Congress should be willing to assume its full responsibility.

I had hoped that the conferees might have gone back and at least cleared up the point raised by the Senator from Tennessee, although, as I have said, my preference would be for an amendment giving Congress the clear authority to act by statute. This was evidently the position concurred in by Attorney General Katzenbach in his original testimony before the committee, and also by several other members who said that the amendment is not what they would have written had they been free to write it. I had hoped that these more substantive matters would have been considered——

Mr. BAYH. Mr. President, will the Senator yield?

Mr. McCARTHY. I yield.

Mr. BAYH. Mr. President, I do not want the RECORD to be incorrect in expressing the present position of the Attorney General. Is the senior Senator from Minnesota aware of the testimony given by the Attorney General before the committee in 1965?

Mr. McCARTHY. I knew the Attorney General was supporting the amendment.

Mr. BAYH. I thank the Chair.

Mr. McCARTHY. I was referring to what was his preferred position when as Deputy Attorney General he testified on the constitutional amendment dealing with Presidential inability. I believe his original position was sound, although, as in the case of many other people, he is willing to support the proposed amendment because of the urgency of the situation.

Mr. BAYH. But the Attorney General did say, before the Subcommittee on Constitutional Amendments of the Committee on the Judiciary, that he believed the proposed amendment was the best alternative that has been conceived.

Mr. McCARTHY. I do not know whether he said it was the best alternative that has been conceived. He said it was the only possible course of action rather than no action at all, not that it was better than any alternative that was ever conceived. He conceived one which he thought was the best he could conceive.

Mr. BAYH. It might be well to have in the RECORD at this point the Attorney General's letter which was placed in the RECORD on the date of the debate when the Senate passed this measure 72 to nothing, if the Senator from Minnesota and the Senator from Tennessee have no objection.

Mr. McCARTHY. I have no objection.

I know the Attorney General is supporting the amendment. I know what his opinion as stated publicly was. I know what his private opinion was. I know what the opinion which he gave to the Judiciary Committee was.

Mr. BAYH. May I ask that the letter may be made a part of the RECORD at this

point, so that subsequent scholars may have the advantage of it?

Mr. McCARTHY. Yes.

Mr. BAYH. Mr. President, I ask unanimous consent that the letter to which I have referred be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., February 18, 1965.

Hon. BIRCH BAYH,
U.S. Senate, Washington, D.C.

DEAR SENATOR BAYH: I understand that recent newspaper reports have raised some question as to whether I favor the solution for the problem of Presidential inability embodied in Senate Joint Resolution 1, or whether I prefer a constitutional amendment which would empower Congress to enact appropriate legislation for determining when inability commences and when it terminates.

Obviously, more than one acceptable solution to the problem of Presidential inability is possible. As the President said in his message of January 28, 1965, Senate Joint Resolution 1 represents a carefully considered solution that would responsibly meet the urgent need for action in this area. In addition, it represents a formidable consensus of considered opinion. I have, accordingly, testified twice in recent weeks in support of the solution embodied in Senate Joint Resolution 1 and House Joint Resolution 1.

My views on the particular question here involved were stated on January 29, 1965, before the Subcommittee on Constitutional Amendments of the Senate Judiciary Committee, as follows:

"In my testimony during the hearings of 1963, I expressed the view that the specific procedures for determining the commencement and termination of the President's inability should not be written into the Constitution, but instead should be left to Congress so that the Constitution would not be encumbered by detail. There is, however, overwhelming support for Senate Joint Resolution 1, and widespread sentiment that these procedures should be written into the Constitution. The debate has already gone on much too long. Above all, we should be concerned with substance, not form. It is to the credit of Senate Joint Resolution 1 that it provides for immediate, self-implementing procedures that are not dependent on further congressional or Presidential action. In addition, it has the advantage that the States, when called upon to ratify the proposed amendment to the Constitution, will know precisely what is intended. In view of these reasons supporting the method adopted by Senate Joint Resolution 1, I see no reason to insist upon the preference I expressed in 1963 and assert no objection on that ground."

I reaffirmed these views with the same explicit language in my prepared statement delivered on February 9, 1965, before the House Judiciary Committee. In view of the above, there should be no question that I support Senate Joint Resolution 1.

Sincerely,

NICHOLAS DEB. KATZENBACH,
Attorney General.

Mr. GORE. Mr. President——

The PRESIDING OFFICER. How much time does the Senator from Tennessee yield to himself?

Mr. GORE. Such time as I may desire.

This is the last opportunity for any group of men in any body politic to revise or clarify the language of the proposed amendment. The [illegible] already adopted the conference report. Should the Senate adopt the conference report in its present form, the proposed amendment would then go to the States for ratification. If the amendment is ratified by three-fourths of the State legislatures, it will then become a part of the U.S. Constitution.

The States will have no choice except to ratify or reject the amendment in the form submitted. That is why I say this is an important action on the part of the Senate.

The charter of our Republic is a precious document. Amendment of it should be approached with the greatest gravity.

In the beginning of our Republic the candidate for President who received the second largest vote became Vice President. The country's experience under that provision soon led to trouble, so much so that in 1804, I believe, the Constitution was amended so that the Vice President would be elected to a separate office by separate vote. Thus, it was sought to minimize the possibility of conflict between a President and a Vice President.

In July 1965 the U.S. Senate is again undertaking to deal with the question of the President and the Vice President of the United States.

On last Wednesday, when the conference report on Senate Joint Resolution 1 was before the Senate, I was one of those who urged that the vote on the conference report be delayed to permit additional time for Senators to examine the language of the proposed constitutional amendment before taking the final congressional action on what would be one of the more important amendments ever adopted to our Constitution.

I wish to make it clear that I did not then, nor do I now, seek either to block action on or otherwise defeat an amendment which would fill an existing procedural void in the area of presidential succession and presidential disability. The tragic events of November 1963 have served to call to the attention of the American people that failure to act on this matter might, at some time in the future, pose serious consequences to our Republic. Indeed, we should regard ourselves as most fortunate that we have not already, at some time in our history, experienced a grave constitutional crisis for want of a procedure for determining with certainty the fact of presidential disability. Clarity and certainty are the essential characteristics of any constitutional provision dealing with the subject.

The basic objective of an amendment such as we now consider should be the provision of a procedure certain for the declaration of disability of a President of the United States, but I submit that the provision now before the Senate provides an uncertain procedure.

In my opinion, the language of section 4 of the proposed amendment, which deals with the determination of the fact of Presidential disability by means other than the voluntary act of the President himself, lacks the degree of clarity and certainty required if the objective of this [illegible] achieved. If the fact of Presidential disability should ever become a matter upon which a President and other authorities designated in the amendment are in disagreement, the most essential requirement is that the procedure for making the determination be clear and precise, with the identity of those charged with responsibility for making the determination beyond question. Should the procedure not be clearly and precisely defined, or if the identity of the determining authority should be subject to conflicting interpretations, this Nation could undergo the potentially disastrous spectacle of competing claims to the power of the Presidency of the United States. This is precisely the risk which this section of the amendment is designed to avoid, but which, Mr. President, may be the result if this amendment should be adopted in its present form.

In my opinion, the language of section 4, if unchanged, is subject to conflicting interpretation—to say the least—and might create a situation in which a serious question could arise as to whether Presidential disability had been constitutionally determined.

I invite attention to the report of the Senate Judiciary Committee, on page 11:

> We must not gamble with the constitutional legitimacy of our Nation's executive branch. When a President or a Vice President of the United States assumes office, the entire Nation and the world must know without doubt that he does so as a matter of right.

I submit that under the proposed amendment one might assume or claim the power of the Presidency, not without doubt but under a cloud of doubt.

Let me read the first sentence of section 4:

> Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

I invite attention to four words in the above sentence—all four of which were added in conference. This is not the same language as that upon which the Senate previously voted. The words added in conference are "either," "of," and "pro tempore."

These words do not appear in the section as it was approved unanimously by the Senate. The addition of the words "pro tempore" effected a change in the Senate version to conform to the language of the House version so as to provide that a declaration of presidential disability should be transmitted to the President pro tempore of the Senate rather than the "President of the Senate."

I raise no question about that.

The statement filed by the managers on the part of the House, referring to the addition of the words "either" and "of", states that "minor change in language was made for purposes of clarification." The addition of these two words was, in my opinion, more than a minor change

in language. This is a change in language which is proposed to be written into the Constitution dealing with one of the most sensitive events of our Republic; namely, the possible declaration of disability of a President of the United States.

In the absence of implementing action by Congress, it is clear that a declaration of presidential disability may be transmitted to the Congress by the Vice President acting in concert with a majority of "the principal officers of the executive departments." Hereafter I shall refer to the principal officers of the executive departments as members of the Cabinet.

To me, it also seems clear, under the language of the provision, that if Congress should "by law provide" some "other body," the Vice President might then be authorized to act in concert with either the Cabinet or such other body.

How can any other meaning be read into the words "either" and "or"?

Let us reverse the sentence. The Senator from Indiana says that the Cabinet would have the primary responsibility. The amendment does not so provide. In reversing the sentence, let us see how it would read and whether it would be changed in any way.

First, I read the sentence as it now appears:

Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Now, Mr. President, I read the sentence in a revised form, and ask whether it would change the meaning in any respect:

Whenever the Vice President and a majority either of such other body as Congress may by law create or a majority of the principal officers of the executive departments transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

If one changes the sequence in which the Cabinet and some other body created by Congress appear in the sentence, one still will have "either" and "or." It would be in the alternative. I do not know how "either" and "or" would give primary responsibility to one and secondary responsibility to the other.

I do not know how the words "either" and "or" can be interpreted to mean that one part has priority, or how it could be read to mean that if the other body is created, the first body has no responsibility and no power to act.

If I understand anything about the English language, if either the Senator or I is privileged to act, then either of us can act or both of us can act. Therefore, I insist that when the conferees added these words, they did more than make a minor change of language for purposes of clarification. I believe that I know why it was added—at least I have been so advised—to make it clear that the Vice President would participate in the declaration of disability with a body created by law if such were done.

But in adding the words, they established the possibility of two coequal bodies—coequal in responsibility under the Constitution—coequal in authority to act in concert with the Vice President to declare the disability of a President of the United States.

I do not believe this effect can be eliminated by a statement of legislative intent.

If my interpretation of the language is correct—and it seems to me that is what the words used clearly say—the Vice President would be free to choose to ally himself with either of the groups, depending upon which included individuals sympathetic with his view of the then current situation. And it is entirely possible that there might be differing views among members of the Cabinet appointed by the President, on the one hand, and members of a group designated by the Congress, on the other hand, on the question of whether a President suffers "disability."

Under the above interpretation—which is my interpretation—a Vice President would be in a position to "shop around" for support of his view that the President is not able to discharge the duties of his office. When the constitutional requirements have been met, it is the Vice President upon whom the duties and powers of the Presidency would devolve.

I should not like to indulge in the assumption that at any future time some diabolical person would be Vice President of the United States. However, the Constitution is the charter for our Republic. Rights must be safeguarded; so must constitutional procedure.

Let me repeat that we seek by this proposed amendment to provide a procedure certain for a declaration of disability of the President of the United States. I submit that the language of the conference report creates uncertainty, rather than certainty. This uncertainty cannot be eliminated by a statement of legislative intent, particularly so when the stated intent is not supported by the precise language of the amendment.

I should like to suggest, although it does not involve any assumption that we shall ever have a diabolical person as Vice President, that where there is a way we must guard against possibility of the will, and beware of the old adage that where there is a will there is a way.

Questions have been raised about the approach taken by this section of the amendment. In my view there is some validity to these questions. Whether the Vice President, who would become Acting President, should have any part in making a determination of presidential disability is, to say the least, debatable.

Were I privileged to reconsider the whole matter, I should want to think about this one point a long time. However I do not press this point now. I recognize that it is perhaps not possible to devise a procedure which would meet with unanimous approval. Members of the Judiciary Committee who have worked long and diligently on this matter state that this is an approach upon which it is possible to reach agreement. I accept their statement in this regard.

I know it is difficult. We have been considering this subject for months. However, is that justification for adopting an amendment on which Senators are in disagreement as to its meaning? Does not this invite a controversy that would have to be resolved by the Supreme Court of the United States at a possibly critical hour in the history of our country? If Senators cannot agree upon the meaning of the language of the amendment, how do we expect the State legislatures to have a clear and precise understanding?

I do not seek to defeat the proposed amendment, but I ask for rejection of the conference report, which changed the language of this provision, not in a minor manner, but in a major way and, I think, in a dangerous way. I ask that the conference report be rejected and that a further conference with the House be requested. Why should there not be an attempt to clarify the meaning or to refine the language of the amendment? If it is the intent that the Cabinet have the primary responsibility, the amendment should so state. If it is the legislative intent that once Congress had created another body the Cabinet would no longer have any responsibility, the amendment should so provide. If that is what we mean, let us say what we mean. Otherwise, how can the legislatures of our respective States act with a clear understanding of what an amendment to the Constitution of the United States in this delicate field means?

If the Vice President is to participate in the disability determination procedure, there should be no question whatever about the identity of the group which would jointly exercise the responsibility with him. Under my interpretation of the language used, a Vice President would be able to act in concert with either of the two groups—and I say again that the word "either" was added in conference—assuming that Congress had acted to create the second group. This would be the language of the Constitution upon ratification of the amendment as now drafted.

In the course of the debate last Wednesday, the manager of the bill, the distinguished junior Senator from Indiana [Mr. BAYH] and the distinguished senior Senator from New York [Mr. JAVITS] disagreed with my interpretation of the language used. It was their view that, if and when the Congress acted to provide by a law a body other than the Cabinet to share the responsibility with the Vice President, the Cabinet would thereafter be removed from the picture altogether. How? The amendment does not so provide. The amendment, once it becomes a part of the Constitution of the United States, will vest in the Vice President and a majority of the Cabinet the power to declare the disability of the President.

My friend the distiguished junior Senator from Indiana and the senior Senator from New York maintained that, after another body was created by law,

only the Vice President and the body created by act of Congress could make a declaration of disability. Does the amendment so provide? I ask my colleagues in the Senate to read it. It does not. It provides that a majority of either one or the other could act in concert with the Vice President to declare the disability of the President.

The Senator from New York contended that the Congress, in the act creating "such other body," might undertake to eliminate the Cabinet, and that the courts in applying a rule of "exclusivity" would rule that since the Congress had acted, the body designated by Congress would possess the authority exclusively. The Senator from Indiana appeared to adopt this view.

The amendment does not so provide. I know of no rule of exclusivity which provides or could provide that a legislative enactment would take precedence over an express provision of the U.S. Constitution, which this amendment, if adopted, would become.

I do not subscribe to the view that Congress, even should it affirmatively undertake to do so, could by statute deny authority and responsibility conferred upon the Cabinet by what would then be an express and integral provision of the Constitution.

I should like to read again the language proposed:

"Whenever the Vice President and a majority of either the principal officers of the executive departments—

Let us leave out the words "either" and "or." I should like to read it in this way:

Whenever the Vice President and a majority of the principal officers of the departments transmit to the President pro tempore of the Senate a statement of the declaration of disability of the President.

That is a part of the amendment. I submit that we cannot take that language out of the Constitution by statute once we write it in. A further amendment to the Constitution would be required.

But without pressing the subject of the final judicial outcome of such a question, I submit that we cannot here decide with certainty what the Supreme Court might finally rule. It is even more certain that we on the floor of the Senate cannot eliminate the possibility that the Court might someday of necessity have to rule upon the question. And it is entirely conceivable that while the courts are in the process of making a final determination there might be two individuals each claiming the power of the Presidency.

Mr. ERVIN. Mr. President, will the Senator yield for a question at that point?

Mr. GORE. I yield.

Mr. ERVIN. I ask the Senator from Tennessee if the proposed amendment would not make the question of whether or not the President is capable of performing the duties of his office—a political question? In my view it would be a political question and for that reason the Court would not be called upon to pass upon it. In other words, the question posed by the Senator's interpretation would be raised from the interpretation of the Senator from Indiana; namely, Is the President incapable of performing the duties of his office?

The amendment provides that, if the President claims he is competent, the question shall be determined by the Congress. Therefore, would not the amendment make it purely a political question as distinguished from a judicial question, since under the terms of the amendment Congress would be the sole arbiter or determiner of the question?

Mr. GORE. I submit to my distinguished friend, the able senior Senator from North Carolina, that I do not find any provision in the amendment that Congress shall be the sole arbiter. I find that the amendment would vest in the Vice President, acting in concert with the majority of the Cabinet, authority to declare the disability of a President of the United States. If that language is not in the amendment, then I simply do not understand the English language.

Mr. ERVIN. Does not the Senator from Tennessee agree with the Senator from North Carolina that the resolution represents an attempt to establish a constitutional method of determining whether the President is disabled to perform the duties of his office?

Mr. GORE. I agree; but it provides two ways in which the determination could be made. That is the difficulty I have with it.

Mr. ERVIN. What is the harm in providing alternatives in making the determination? Would that not improve the amendment? It would make it more flexible. If the Senator from Tennessee is correct in his interpretation—and he is making a very fine argument—that the Vice President, either acting with the majority of the Cabinet or acting with the majority of an alternative body established by Congress, could declare a President to be disabled, would that not be an advantage? I feel that it would, in that it provides some flexibility instead of only one inflexible procedure.

Mr. GORE. The Senator in charge of the bill has said that that is not the correct interpretation. But to answer the Senator's question, I believe the existence of an alternate procedure would be harmful, and could be the cause of much mischief. The Senator has asked me a question. I should like very much to cite an example in which the language might even prove to be disastrous.

Let us suppose that the Congress has acted to create by law some other body to act in such cases with the Vice President. Let us suppose further that the individuals making up that body, or a majority of them, felt that the President was fully capable of discharging the duties of his office. But suppose the Vice President held a different view. And suppose further that, for one reason or another, a majority of the Cabinet shared the view of the Vice President. In such a situation if the Vice President and a majority of the Cabinet transmitted the necessary declaration to the Congress, who, then, exercises Presidential power? Will there be time for the courts to make a determination of competing claims without disaster? We all

arises. But, in my opinion, it could arise, under the language contained in section 4 and under the hypothesis on which the Senator has based his question.

Mr. ERVIN. Does not the Senator from Tennessee contemplate the possibility that the members of the Cabinet might have such an overpowering sense of loyalty to the President that they would be unwilling to take such action? In such a case, in my view, it would be desirable to have an alternative body that could take the action rather than run the risk of having as President of the United States a person who conceivably might be a victim of insanity.

Mr. GORE. If the answer to the Senator's question is "Yes," then clearly and beyond question only one group should be empowered to act at one time.

Let me go further. I am not at all sure that it would be wise to set up an alternative procedure. Our basic objective should be to provide a procedure certain for the declaration of the disability of the President. I should like to recall to Senators that there is now one procedure under the Constitution for the removal of a President from office, namely, impeachment. It is now proposed to provide a second means by which a President could be removed and separated from the power of that office, the most powerful office in the world. If we are to take this step—and I would like to take such a step—we should do so with clear understanding and with certain procedure, not procedure which could invite a court contest at a critical hour in our Republic.

Mr. ERVIN. That is where the Senator from North Carolina reaches a point of disagreement with the Senator from Tennessee. I do not understand how there would be a court contest, because the amendment provides that the Vice President and either the Cabinet or another body established by Congress would decide the question. They would make a temporary decision, and that temporary decision would be immediately transmitted to the Congress for its decision.

Mr. GORE. Where in the proposed amendment is there a provision for a temporary decision?

Mr. ERVIN. The proposed Constitution amendment provides that the Vice President could not take over the office of President unless he had given immediate notice to the President pro tempore of the Senate and the Speaker of the House. It also provides if Congress is not already in session, that it must be called immediately into session and must make a decision on the issue within 21 days; Congress would decide the question before it would ever reach the courts.

Mr. GORE. Mr. President, I would like to debate further. I am advised that I have about exhausted my time. Will the Senator from North Carolina ask consent that the time used in our colloquy thus far be equally divided or charged to his side?

Mr. ERVIN. Mr. President, I ask unanimous consent that I may have 2 minutes of my own time in which to thank the Senator for yielding, and to

say if the interpretation of the senior Senator from Tennessee is correct, that it would improve, instead of hurt, the amendment by making it more flexible.

Mr. GORE. Mr. President, an anomalous situation has just been revealed. The distinguished senior Senator from North Carolina, formerly a justice of the Supreme Court of North Carolina, has agreed with my interpretation and has said that the language improves the amendment. The distinguished Senator from Indiana disagrees with my interpretation.

I submit that when there is a disagreement as to interpretation between two of the authors of an amendment, this is the time to restudy, to redefine, and to clarify, before we submit the constitutional amendment to the States for their ratification or rejection. We are about to write into the Constitution of the United States an amendment that could be the most important amendment ever written.

Mr. ERVIN. Mr. President, I ask unanimous consent for 1 minute.

Mr. GORE. Mr. President, I do not now yield to the Senator.

Mr. ERVIN. I have not agreed with the Senator's interpretation.

The PRESIDING OFFICER. The Senator from Tennessee declines to yield.

Mr. GORE. I have only 4 minutes remaining.

In a situation involving the passing of the power of the Presidency from the hands of one individual to another it is equally important that the law be certain as that it be just or wise. Admittedly, we cannot anticipate and guard against every conceivable contingency. But in this case, we now have an opportunity to eliminate uncertainty, and to provide with certainty exactly who shall make the determination—not a temporary decision, but a determination of the disability of the President of the United States; and upon such a determination the power of the Presidency would pass to the hands of the Vice President, who could then fire the Cabinet, or part of it, and then make another declaration within 4 days of a contrary declaration by the President.

If we adopt the conference report in its present form, the matter will pass from the hands of Congress, and there will be no opportunity to change the language. There can be no language changes during the ratification process.

I am also concerned about remarks made by the junior Senator from Indiana during the debate last Wednesday which left me, at least, in doubt about the time at which it is intended by the authors of the amendment that the Congress would act to create "such other body." I had rather supposed that it was intended that the Congress would, reasonably promptly after ratification of the proposed amendment, proceed to consider this matter at a time when there was no question whatever that the then President was fully able to discharge his duties. But there is no guarantee that Congress would in fact act at a time when this question could be given dispassionate consideration. I think it should. If the amendment is adopted, it seems to me that Congress should proceed forthwith to write a law in this regard, creating such a body. However, some of the remarks of the Senator from Indiana seemed to reflect a view that Congress might well not act until a question had been raised about disability on the part of the President. Is it the view of the authors of the amendment that Congress should not act until a situation arose—such as described by the senior Senator from North Carolina [Mr. ERVIN]—in which the prevailing view of Members of Congress was that the President was in fact disabled but a majority of the Cabinet was disinclined to so declare?

If that is the assumption, let us look at the other side of the coin. Suppose that instead of a Cabinet being reluctant, the body created by Congress is reluctant. Then there would be the possibility of one or the other acting, not as anticipated by the authors of the amendment, but in contrast therewith. Could Congress act wisely under such circumstances? It might not be able to act at all, if we waited until such time as Congress believed the President was disabled and thought the Cabinet was reluctant to act.

If a President should be resisting a determination of disability he might veto any bill passed, thus requiring a vote of two-thirds of both Houses of Congress to override the veto. Again, we all hope that there will never be an occasion for Presidential disability to be declared, either by the President himself or by anyone else. But if the need ever arises for such action other than by voluntary act of the President, it would likely have to be done in circumstances in which the President would not concur.

If the approach followed in the proposed amendment is to be followed, I would hope that any action taken by Congress would be taken at a time and under circumstances free of constitutional crisis.

Moreover, Mr. President, I feel strongly that if Congress by law provides for some "other body" to act jointly with the Vice President in making a declaration of Presidential disability, it ought to be clear beyond all doubt that only that "body" may participate with the Vice President in making such a declaration. I do not believe it improves the amendment to provide that two bodies may act. If either of two groups possess such authority the possibility of confusion and conflicting claims is much magnified.

As I have stated, it is my opinion that the language now before the Senate would authorize either of two groups to join with the Vice President in declaring Presidential disability. At the very least there is doubt about the matter. And a doubt or a question is all that it takes to require a Supreme Court decision, with the possibility of constitutional chaos during the period of judicial proceedings.

Mr. President, we need not take that risk. The proposed amendment is still before Congress.

If two-thirds of the Senate vote "yea," the amendment will no longer be before the Senate. There will no longer be any opportunity to clarify or define the language. It should not be overly difficult to devise language to clarify this one question—and it is an important one.

Unfortunately, under the existing parliamentary situation, there is no way in which language revision can be considered other than by rejection of the conference report. Once this step has been taken, a further conference with the House can be requested—that is what I propose—and the conferees would then have an opportunity to present language free of uncertainty. We should establish a procedure with certainty for the declaration of the disability of the President of the United States. I say that this uncertainty, instead of improving the amendment, condemns it to uncertainty and unwisdom.

Should the conference report, with its present language, be approved, doubt and uncertainty will, upon ratification, become embedded in the Constitution.

For the reason I have stated, I urge Senators to vote to reject the conference report and give to the conferees an opportunity to bring to us an amendment having precise, clear meaning.

Mr. President, I reserve the remainder of my time.

Mr. BAYH. Mr. President, I yield 10 minutes to the distinguished Senator from North Carolina.

Mr. ERVIN. Mr. President, the able and distinguished junior Senator from Indiana [Mr. BAYH] interprets the joint resolution as providing that if Congress does not act to declare the disability of the President, then such power resides in the Vice President, acting with the consent of a majority of the Cabinet.

If Congress does act, it must create a body which will supersede the Cabinet, and that body, acting through a majority, in agreement with the Vice President, will declare the disability.

According to the junior Senator from Indiana [Mr. BAYH], if Congress establishes a body the Vice President may act either in conjunction with that body or the Cabinet but not with both. The able and distinguished senior Senator from Tennessee says, on the contrary, that the Vice President may elect to use both. I do not know what ultimate decision or construction wil be placed on the amendment, but I say that a good argument can be made for either interpretation. However, I shall support the joint resolution.

The Senator from Indiana, the Senator from Tennessee, or I could have drawn a better resolution if we had had uncontrolled authority to do so. I have worked on this problem. If I were allowed to draft a resolution by myself, I think I could draw a better one. As a matter of fact, I drew one.

I do not believe the Vice President ought to be involved in the procedure. Should this situation arise, I feel that it should be resolved by the Congress. However, the measure before us reflects an analgamation of views. As such, it represents a concensus which may not satisfy any of its proponents entirely. It may not be perfect and, indeed, in my view it is not perfect but I feel that it is the best resolution that is attainable.

I had to withdraw many of my opinions in order to obtain a resolution that would

be approved by the Committee on the Judiciary and the conference committee.

I am not at all disturbed by the interpretation which my good friend, the Senator from Tennessee places on the document. If it is a correct interpretation, in my judgment, it would make the resolution better. This is a dangerous period in which to live, a period in which the President of the United States has his finger on the button that can start an atomic holocaust.

Many provisions of law provide alternative means. For example, in virtually every State of the Union, a prosecution for a felony can be started either by an individual in the court of a justice of the peace or by the indictment of a grand jury. However, before anybody can be convicted of a felony, he must be convicted by the same type of petit jury or by a trial on the merits.

It is quite possible that in the future we may have a President who would be suffering from a mental disease, and the members of the Cabinet, appointed by the President, would be so loyal to him that they would be blind, to some extent, to his weaknesses and would not be amenable to declaring him disabled.

It would be well in a case such as that to have bodies set up by Congress with the power to act. I believe that the interpretation given by the Senator from Tennessee, instead of injuring the resolution, would make it better. After all, the Vice President could not take over the office without the approval of a majority of either the Cabinet or the body established by Congress. I presume that all of the members of either the Cabinet or the body set up by Congress would be patriotic Americans. Even in that case, before the Vice President could take over, the President pro tempore of the Senate and the Speaker of the House of Representatives would have to be notified. Congress would then have to assemble, if it were not already in session, within 48 hours. Furthermore, it would have to make a decision within 21 days. If it did not make a decision within 21 days by a majority vote—two-thirds of each House—the powers would return to the President.

Mr. GORE. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. GORE. Mr. President, I apologize to the Senator for my reluctance to yield further during the colloquy in which we engaged.

Mr. ERVIN. I understand. The Senator was most generous.

Mr. GORE. Mr. President, let us suppose that the Vice President and a majority of either body provided for in the proposed amendment were to transfer to the President pro tempore of the Senate and the Speaker of the House a declaration of the disability of the President of the United States. Upon whom would the power of the Presidency then devolve?

Mr. ERVIN. The power would devolve upon the Vice President temporarily, until Congress could act, and then the decision would be made by Congress.

Mr. GORE. Mr. President, who would then have the power to appoint Cabinet members?

Mr. ERVIN. I do not believe that this amendment deals with that question. I believe that the Vice President could do so temporarily. However, I do not believe that Congress would confirm his appointees at a time when they were considering the question of whether he should be permitted to remain in the Office of President.

Mr. GORE. If the Vice President becomes Acting President?

Mr. ERVIN. The Senator raised the question before. The question was also raised concerning whether the amendment should provide for succession to the Presidency in the case of the death of the President and Vice President, or the disability of both of them simultaneously.

Mr. GORE. The Acting President could dismiss his predecessor's Cabinet.

Mr. ERVIN. The Senator is correct.

Mr. GORE. Then he could appoint members of the Cabinet of his own choosing, subject to confirmation.

Mr. ERVIN. Congress, by action, in 15 minutes, or not over 21 days, could throw them all out of office if it were to see fit.

Mr. GORE. Suppose that under the proposed amendment, the President, over his signature, were to notify the President pro tempore that he is able to assume the duties of the office of President. Then suppose that the Acting President, in concert either with the Cabinet, or with the other body which Congress would create, were to send a second declaration to the President pro tempore of the Senate declaring the disability of the President.

Mr. ERVIN. That could happen under either the construction placed on the amendment by the Senator from Indiana or the Senator from Tennessee. There would be no difference whatever in either of those situations, under either construction.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. GORE. Mr. President, I should like to conclude this point first.

Mr. President, will the Senator yield further?

Mr. ERVIN. I yield first to the Senator from Tennessee and then to the Senator from Indiana.

Mr. GORE. If that be the case, if the answers which the distinguished and able senior Senator from North Carolina has provided be correct, then I say that it is all the more necessary to provide a procedure certain for the declaration of disability of the President. It illustrates clearly the unwisdom and the danger of creating a situation whereby there may be competing claims and groups as to the disability or ability of the President. We are dealing with a subject which might endanger the very procedures of our Republic.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ERVIN. Mr. President, will the Senator yield me an additional minute?

Mr. BAYH. I yield 1 more minute to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina is recognized for 1 additional minute.

Mr. ERVIN. I should say that every legal and constitutional situation conjured up by the Senator from Tennessee would be possible under either interpretation. There would be absolutely no difference whatever.

Mr. BAYH. Mr. President, I yield 10 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The junior Senator from Illinois is recognized for 10 minutes.

Mr. DIRKSEN. Mr. President, first of all, I should like to pay testimony to the distinguished Senator from Indiana for the long and painstaking labor that was involved in the preparation of the proposed amendment. He has been very patient. He has heard the testimony of many witnesses. He has been very patient in the conferences with the House.

I pay testimony also to the distinguished jurist, the Senator from North Carolina, for the great service he has rendered.

I pay testimony likewise to the Senator from Nebraska [Mr. HRUSKA], good lawyer that he is, who has worked diligently on this matter, knowing its importance and knowing that sooner or later Congress would have to do something in this field.

I presume that the first thing we discover is that language is not absolute. The only word I can think of that is absolute is the word "zero." However, interpretations of all kinds can be placed upon language, and all the diversities of judicial decisions that are presumed since the beginning of the Republic, if placed in a pile, would reach up to the sky. Consequently, in dealing with the language before us, we have the same problem that we had in the subcommittee and in the conference.

Fashioning language to do what we have in mind, particularly when we are subject to the requirement of compression for constitutional amendment purposes, is certainly not an easy undertaking. However, I believe that a reading of the resolution will speak for itself.

Bruce Barton, a great advertising man who served one term in the House of Representatives and wrote that fascinating book, "The Book Nobody Knows," meaning the Bible, once observed to me that there was a penchant to read all the commentaries, but not to read the book itself. I am afraid that too often we fail to read into the RECORD exactly what is present.

They have a better custom in the House of Representatives, because when a bill goes to final reading in the Committee of the Whole, it is read a paragraph or section at a time. In the case of legislative measures, they are always read by section. In the case of appropriation bills, they are read by paragraph.

Perhaps it would be rather diverting if we started with section No. 1 of the amendment, which reads:

> In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

When Lincoln died, there was a quick transition of the Presidency into the hands of Andrew Johnson, and it offered no problem. To my knowledge, there has not been a resignation from the Presidency, and there has been no removal.

Only once was an effort made to impeach a President and remove him from office. So this article of the section stands by itself and speaks for itself.

Section 2 provides:

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

When Franklin Roosevelt died, Truman acceded to the Presidency, and there was no Vice President. We then set up a line of succession, and I was in the House of Representatives when it was done. I do not know that our labor was a happy one, because it was beset with some prejudice and some bias. This question should have been taken care of long ago.

The question is taken care of through amendment to the Constitution. Who better to nominate the Vice President than the President himself? He is the party responsible. There is the sense of affinity, the capacity of working with somebody. The President should be able to select his working partner. That selection would be confirmed by majority votes of both Houses of Congress. That is about as good as English language can state it. I doubt if we can set it out more clearly.

Section 3 states:

Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

There is the President, on his own volition and by his own motion, advising the Congress he can no longer discharge his duties. What more natural than that the Vice President should take over, not as President, but as Acting President, because there is always the chance of recovery? It took a long time in the case of Woodrow Wilson. It required only 90 days in the case of President Garfield when he passed away. But under this proposal the duties go to the Vice President as Acting President. That appears to be the logical way, in the absence of any contrary declaration made by Congress.

Then let us go to section 4:

Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

One can make a hundred different assumptions under that language. The President might dismiss the Cabinet. But the President did not create the Cabinet. He appointed those who filled the positions. But it is the Congress that created the Cabinet, and Congress can always create a Cabinet, if it so desires. This is still the disciplinary branch in the Federal Government. It was no wonder that President Monroe said, "The legislative branch is the core and center of our free Government." There are only a few things that we cannot do. We cannot dismiss the President. We cannot diminish the number on the Supreme Court. We cannot abolish the Supreme Court. But we can do just about everything else. We can reduce their number if we so desire, and, of course, we can abolish every Cabinet post. There is nothing to stop the Congress from doing it.

In the light of that power, I doubt whether we need to be disturbed by the ghosts that have been created in connection with the question, largely on the basis of first one assumption and then another.

So the Vice President becomes the Acting President, and as such he continues until the disability is removed.

That section goes further.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within 4 days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office.

One would have to assume a venal Vice President; he would have to assume either a venal or very timid Cabinet, that would not carry out their duties. If they failed so to act, because of an overriding fidelity to the Chief Executive who placed them where they were, that might be a circumstance to be taken into account. But I cannot imagine a member of the Cabinet so wanting in fidelity to the Republic, rather than to the man who placed him in his position, that he would not undertake to discharge his duty. But if the Congress felt, for any reason, that that was not going to be done, we have made provision in this language for some other body, and the Congress can create that body. It can consist of civilians, including people representing every walk of life, a goodly component of doctors, and those who have the capacity to pass upon the question of whether the inability still exists or whether the inability has passed.

I cannot imagine intelligent, competent, and patriotic Americans serving as the principal officers in the executive branch, or in any other body which Congress might create, that would not deal in forthright fashion with the power that is there, to determine whether the disability had been removed and whether the elected Chief Executive was capable or not capable of carrying on his duties and responsibilities.

Mr. GORE. Mr. President, will the Senator from Illinois yield?

Mr. DIRKSEN. I am glad to yield to the Senator from Tennessee.

Mr. GORE. I appreciate the careful and tightly reasoned statement that the able Senator from Illinois is making. Most of us, perhaps, think of the disability of the President in the light of the tragic events of November 1963. I submit that a physical impairment of the President may not be the only condition against which we must most zealously guard. Disability may be phychiatric. It may be mental. It may be a sort on which people would honestly have differing opinions. A President might be physically fit—the picture of health; but to those who work closely with him, there might be a conviction that he had lost his mental balance, that he had psychiatric problems. In such an event, the country could be rent asunder by political passions. The able Senator has referred to the fact that the Acting President would assume the powers of the office of President. I asked the Senator from North Carolina if the Acting President could not dismiss the Cabinet of the previous President and the answer was yes, that of course he could, that he could also dismiss a few, or he could dismiss a part of them, or he could retain the few who agreed with him.

The PRESIDING OFFICER. The time of the Senator from Illinois has expired.

Mr. BAYH. Mr. President, I yield 5 additional minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 5 additional minutes.

Mr. GORE. In that event, it might be crucial, and I believe necessary, that if the man who is to succeed to the office of Acting President is to initiate a declaration—and I believe the Senator will agree that neither the Cabinet nor the other body referred to in the proposed amendment could declare the disability of a President with any effect unless the Vice President concurred in it—if the Vice President, the man to succeed to the power of the office, with the power to select his own Cabinet, or to dismiss all or a part of the Cabinet of the President is to participate in the declaration, the body which must act in concert with him should be certain and beyond doubt. I believe it is most unwise and dangerous to have two groups which might be competing in such a disastrous situation.

Mr. DIRKSEN. I doubt the substance of my friend's premise. I should not like to be around to enjoy the furor if ever the Vice President undertook, for venal purposes, or motivations of his own, to pursue that kind of course.

Mr. BAYH. Mr. President, will the Senator from Illinois yield?

Mr. DIRKSEN. I cannot imagine it, because, after all, the people of this country will have something to say about that. Where would it lead? They would not exactly run him out on a rail, but his whole political future, such as it might be, would come to an end at that point.

Let us always remember that we are dealing with human beings and human motivations, and also with the sense of fidelity and affection that people bear, one for another, when they are thrown into a common labor, such as that of a President and Vice President, and the principal executive officers under those circumstances.

Mr. BAYH. Mr. President, will the Senator from Illinois yield?

Mr. DIRKSEN. I yield.

Mr. BAYH. I thought it might be helpful to ask the Senator from Illinois if he recalls the discussion in committee on this point. The committee realized that this danger lurked on the horizon, but that there was an equally severe danger that we might face a long period of Presidential disability in which a Cabinet officer might resign, or die. Unless the Vice President were given this power, he would be precluded from replacing a member whom he needed to help fill the Cabinet. I believe that the Senator from Illinois has hit the nail on the head when he advances the belief that in a time of national crisis, the American people would not tolerate an act on the part of the Vice President that was not in the best interests of the country.

Mr. DIRKSEN. There are some fundamentals we must remember in dealing with a matter of this kind. The first is that we do not strive for the eternal. I doubt that the English language could accomplish that, because that would be absolute. Second, we know that there will always be change, but in the change, the Constitution in its interpretation itself indicates that we would take it in our stride.

There was once a professor at Johns Hopkins University who had fashioned a thesis and a postulate that he though would stand up under every circumstance. Then he sat down with his fellow faculty members to discuss it. When the discussion was ended, his thesis and postulate were torn apart with suppositions and other arguments to the point that he gave out a frantic cry, "In God's name, is there nothing eternal?"

One of his fellow professors answered, "Yes, one thing, and that is change."

Always there will be change. We have not done an absolute job of solving this problem, but I believe that we have done a practical job. That is what we sought to do.

Mr. GORE. Mr. President, will the Senator from Illinois yield?

Mr. DIRKSEN. I yield.

Mr. GORE. Instead of assuming there may be a Vice President who is venal or diabolical, let us assume that there may be one who is perfectly honest and sincere concerning circumstances on which there is a sharp division of opinion both within the Cabinet and within Congress, but despite that disagreement, the disability of the President is declared. The Vice President then becomes Acting President. There is no certainty, in this amendment, as to which body he must act in concert with.

The PRESIDING OFFICER. The time of the Senator from Illinois has expired.

Mr. BAYH. Mr. President, I yield 2 more minutes to the Senator from Illinois, but I would like to say that I intend to speak specifically to the point which the Senator from Tennessee raises. In my opinion there is no doubt. I believe that we have sufficient evidence, plus the intentions as reflected in the conference committee, to remove all questions. Whether I shall be successful, so far as the Senator from Tennessee is concerned, I do not know, but I shall do my very best.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 2 additional minutes.

Mr. GORE. I am sure the Senator from Indiana will present an able argument, but there is disagreement among Senators as to whether, after Congress has created another body, the Cabinet could declare, in concert with the Vice President, the disability of the President. The Senator from Indiana asserts that it could not do so.

The Senator from Indiana says that when Congress acts to create by law another body, the provision which vests power in the majority of the Cabinet, in concert with the Vice President, would then be superseded. I ask the Senator, as a lawyer, if he believes that Congress can, by statute, supersede and strip from the Cabinet the power vested by the Constitution in a majority of that Cabinet?

Mr. DIRKSEN. Congress, I believe, can take away any power that any Cabinet member has. There is not a line in the Constitution of the United States which provides for a Cabinet as such. Therefore, they are endowed with powers which we give to them.

Mr. BAYH. Let me suggest to the Senator from Tennessee, who has posed some perplexing questions, that I should like to have an opportunity to answer them but would appreciate it if he would ask these questions on his own time.

I merely wish to have all of the proposed amendment appear in the RECORD, so that when the 90,000 or 100,000 copies are sent to the libraries and schools and colleges, the entire text will be available, and also that the names of the managers on the part of the House and on the part of the Senate, who served on the conference committee, will be shown. That will complete the RECORD.

There being no objection, the proposed article was ordered to be printed in the RECORD, as follows:

ARTICLE —

SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

SEC. 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

SEC. 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

SEC. 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

And the House agree to the same.

EMANUEL CELLER,
BYRON G. ROGERS,
JAMES C. CORMAN,
WILLIAM M. MCCULLOCH,
RICHARD H. POFF,
Managers on the Part of the House.

BIRCH E. BAYH, JR.,
JAMES O. EASTLAND,
SAM J. ERVIN, JR.,
EVERETT M. DIRKSEN,
ROMAN L. HRUSKA,
Managers on the Part of the Senate.

Mr. DIRKSEN. Mr. President, I believe we have done a reasonably worthwhile job insofar as the feeble attributes of the language can accomplish it. I compliment and congratulate the distinguished Senator from Indiana, the chairman of the subcommittee, on the good job he has done.

Mr. BAYH. Mr. President, I thank the Senator from Illinois and other Senators who have labored tirelessly to help us get this far down the road.

I yield myself such time as I may require to discuss the points which have been raised by Senators. I have no prepared speech. I have made some notes on one or two points that I wish to discuss. I shall speak with as much ability as I possess and try to clarify the question of intent in the consideration of this subject. However, I emphasize that the Senator from Tennessee and I share one intention, among others, and that is that we seek to clarify any ambiguity which may exist.

Reference has been made to the position of the Attorney General of the United States which was previously inserted in the RECORD and verified his position supporting Senate Joint Resolution 1.

Mr. President, I also quote one sentence from his testimony before the subcommittee. He said:

I want to reaffirm my prior position that the only satisfactory method of settling the problem of Presidential inability is by constitutional amendment, as Senate Joint Resolution 1 proposes.

In this position, he was joined by a rather long list of Attorneys General of the United States, going back to Biddle and Brownell. He was also joined by such constitutional experts as Paul Freund. They felt that if there was any doubt, the Congress should propose an amendment to the Constitution.

The question has been raised as to why we have put the Vice President in the

position of acting in the capacity he would have under the amendment. I believe that former President Eisenhower dramatically made this point in the presentation he made before the conference of the American Bar Association called by the President last June. President Eisenhower said he felt it was the responsibility of the Vice President to assume the authority of the Presidential office in the event that the President was unable to perform his duties, and that the Vice President could not escape that authority and obligation.

Therefore, I believe that we have done the right thing in placing the Vice President in the position of participating in that determination.

There has been a great deal of discussion about the last section, the most controversial section, of the proposed amendment. I point out, based upon my judgment, that this most controversial part of the amendment rarely if ever would be brought into play.

As the Senator from Illinois [Mr. DIRKSEN] has pointed out, the amendment provides for the voluntary declaration of disability by the President. Let us assume, for example, that he is undergoing a serious operation, and that he does not want to take the chance of having the enemy take advantage of the situation.

The amendment also deals with the kind of crisis which President Eisenhower described, such as a President suffering from a heart attack. For example, at the time he might be in an oxygen tent the Russians might begin to move missiles into Cuba. At that moment no person in the United States would have any power to make any decision that had to be made.

The amendment would take care of these points.

Now we get to the point to which the Senator from Tennessee has correctly alluded; namely, the question of a President who, although physically able, is not the man, from a substantive point, who was previously elected to that office. Thus arises the difficult problem of mental disability.

The Senator from Tennessee bases his argument on the fact that changes were made in the conference committee. I point out that in referring to the "either/or" change, the Senator from Tennessee overlooks the fact that several other changes were made in conference. I would not want to mislead anyone into believing that that was the only change that was made. Several others were made, in connection with which we tried to compromise with our friends in the House.

I believe that we have a better amendment now, in most respects, than when it left the Senate. I would have preferred the language which the Senator from Tennessee has suggested. This was not the case. The amendment is the product of our conference. I hope we can at least shed some light on our belief as to the validity of our contention that there is no ambiguity here.

With respect to "either/or", it is clear to me—and I invite the attention of Senators to the definition of this phrase in Black's Legal Dictionary and to most legal cases on the point—that when we talk about "either/or" it is interpreted in the disjunctive. It does not refer to two, but to either one or the other.

Reference was made—not by the Senator from Tennessee, but by another Senator—to the fact that the Vice President could in effect at one time go to either one of these bodies and use them simultaneously. I do not see how it is possible to do that.

Mr. GORE. Mr. President, will the Senator yield?

Mr. BAYH. I should like to finish my argument. Then I shall be happy to yield. We have some evidence about what the courts have indicated in this respect. Certainly it is the intention of the conference committee and it is my contention, as the floor manager of the joint resolution and as the principal sponsor of it—and I believe I can also say that it is the opinion of a majority of the Judiciary Committee—that Congress should have some flexibility, and that we do not wish to nail down a plan which may not work. It is our intention for the plan, as it is enacted, to have the Vice President and a majority of the Cabinet make the decision, unless Congress, in its wisdom, at some later time, determines by statute to establish some other body to act with the Vice President. It would be rather ridiculous to give that power to Congress and provide at the same time that it may not exercise it within a certain number of years, or could not exercise it at all. We give to Congress, in its wisdom, the power to make the determination as to when another body should act in concert with the Vice President. It is our intention that at that time this other body shall supersede the Cabinet.

Mr. LAUSCHE. Mr. President, will the Senator yield for a brief question?

Mr. BAYH. I should like to yield for only a brief question.

Mr. LAUSCHE. Yes. Was there any discussion among the conferees about putting it in the conjunctive, instead of the disjunctive, having both a majority of the members of the Cabinet and a majority of the members of the body created by Congress act?

Mr. BAYH. This was never considered.

Mr. LAUSCHE. It was never considered?

Mr. BAYH. It was never considered.

Since the Senator from Tennessee raised the question I have tried my best to look for cases which might soothe his concern about the ambiguity which he believes exists and which I believe does not exist.

Mr. President, I have uncovered three or four cases dealing with article V of the Constitution. They are *Hawke* v. *Smith*, 253 U.S. 221; *Dillon* v. *Gloss*, 256 U.S. 368; the *National Prohibition* cases, 253 U.S. 350; and *United States* v. *Sprague*, 282 U.S. 716.

As the Senate knows, article V deals with the means to amend the Constitution itself. Congress is given the authority to use either the means of legislative ratification or State convention ratification. Either one or the other may be used. In dealing with the fifth article, the courts have held in those cases to which I have referred—which are as close to being on the point as any I have been able to find—that Congress has full and plenary power to decide which method should be used, and once the choice is made, the other method is precluded.

These cases substantiate our feeling—at least our intention—as to what we desire to accomplish in the wording which has been placed in the conference report.

I should like to go one step further. In the debate I do not wish to concede ambiguity. But out of friendship for the Senator from Tennessee [Mr. GORE], I should like to suppose, for only a moment, that there might be ambiguity in the use of the words "either/or." What then would be the result? In the event of ambiguity there is no question that the Court would then look to the legislative intent. As a result of the insight and the perseverance of the Senator from Tennessee, we have now written a record of legislative intent, as long as our arms, to the effect that we desire only one body to act on the subject. In the event that an ambiguity is construed, I suggest that there is one last safeguard. I am certain that Congress, under the enabling provision which would permit another body to act with the Vice President, would in its wisdom at that time specify that, pursuant to section 4 of the 25th amendment to the Constitution, the other body is designated to supplant and replace the Cabinet and act in concert with the Vice President. So I am not concerned that there might be a vexatious ambiguity present.

I should like to speak on one other point which the Senator from Tennessee raised, and which I believe is a very good point.

Mr. LONG of Louisiana. Mr. President, will the Senator yield at that point?

Mr. BAYH. I yield.

Mr. LONG of Louisiana. It seems to this Senator that in a dangerous time when the inability of the President might be in question, particularly with respect to his mental capacity, Congress should act on the question. As I understand, no matter which body might make the declaration that the President was not able to serve, the question would then be before the Congress and it would have to be decided by a two-thirds vote; otherwise, the man who had been elected to the office of President would continue to serve as President.

Mr. BAYH. The Senator from Louisiana is correct. To remove, for any reason or on any ground, a man who has been elected to the most powerful office in the world, the office of President of the United States, is not an action to be taken lightly. As the Senator has pointed out, and as Senators will observe in other places in the amendment, we have leaned over backward in our effort to protect the President in his office. The decision would have to be made by Congress. A two-thirds vote would be required. That is a greater safeguard than is presently available under the provision for impeachment proceedings. Un-

der that provision a vote of two-thirds of the Senate is needed; under the proposed amendment a vote of two-thirds of both Houses would be required.

There is no need to extend the debate, but I should like to speak to the question which the Senator from Tennessee raised. The Senator said that if there is any doubt, let us wait. We cannot be certain what the Supreme Court of the United States will do. I doubt very much that there have been many pieces of proposed legislation, certainly none related to constitutional amendments, that have passed this body in which there has not been considerable and heated debate as to whether some of the proposed language was right or wrong. Today I am certain that there are some Senators who would say that we cannot tell what the Supreme Court will do tomorrow with a constitutional amendment that is already on our books. The opinions of the Court change with time. I think we have to determine one question: Is the conference report the best piece of proposed legislation we can get and is it needed? As loudly as I can, I say that we must answer the question in the affirmative.

Some Senators might say, "What is the rush? We are not ready to adjourn yet. We can send the measure back to the conference committee and have it reworked."

To those who are students of history I do not have to document again and again the fact that we have labored for 187 years as a country and we have not yet been able to get sufficient support for any type of proposed legislation in this area. In 38 of those years we had no Vice President. We have had three serious presidential disabilities. Wilson was disabled for 16 months. Garfield was disabled for 80 days, and during that period there was no executive running the country. Can Senators imagine what would happen to the United States and the world today if the United States were without a President? For all intents and purposes, we would be involved in world chaos from which we could not recover.

For more than 18 months the Senate has studied the proposed legislation. Two sets of hearings have been held. I appreciate the support that Senators have given us in this effort.

In the last session of Congress, the Senate passed the proposed legislation by a vote of 65 to 0; in the present session of the Congress, the Senate passed the measure by a vote of 72 to 0.

This measure is not something which we have arrived at on the spur of the moment. We have had controversy and differences of opinion over individual words. I should like to remind Senators that during the past few years we have received over 100 different proposals. Since I have been chairman of the Subcommittee on Constitutional Amendments, during the past few months 26 different proposals have been submitted.

I point out that if those who had the foresight to introduce proposed legislation on the subject—the Senator from North Carolina [Mr. ERVIN], the Senator from Illinois, the Senator from Kentucky [Mr. COOPER], Senator from Idaho [Mr. CHURCH], and others—had not been willing to agree and had not been willing to try to reach a consensus, and if it had not been for the guiding hand of the American Bar Association to try to get those with differing views together, we would not be so far as we are now. I do not believe that we should let two words separate us.

Mr. LONG of Louisiana. Mr. President, will the Senator yield?

Mr. BAYH. I yield.

Mr. LONG of Louisiana. If I had had my way, there are two or three changes I can think of immediately that I should like to have made. I suggested some of them to both the leadership and also to the executive branch—for the measure vitally affects the executive branch—when the subject was being considered previously. The advice that I received at that time was, "Please don't muddy the water. The amendment has been needed since the establishment of our country. If we start all over again, not only will the junior Senator from Louisiana have two or three additional suggestions that he would like to urge, but other Senators will also have suggestions to make, and we shall be another 100 years getting to the point which we now have reached."

Mr. BAYH. I thank the Senator from Louisiana. He is exactly correct.

Mr. ERVIN. Mr. President, will the Senator yield?

Mr. BAYH. I yield.

Mr. ERVIN. When we started to consider the proposal, the Senator from Indiana and I had a discussion. We were convinced of the old adage that too many cooks would spoil the broth. We had more cooks with more zeal concerned with preparing this "broth" than any piece of proposed legislation I have ever seen in the time I have been in the Senate. If it had not been for the perseverance, the patience, and the willingness to compromise which was manifested on a multitude of occasions by the junior Senator from Indiana, we would never have gotten the resolution out of the subcommittee, much less through the full Judiciary Committee and then through the conference with the House. I am of the opinion that the conference report of which the Senator from Indiana is now advocating approval would submit to the States the very best possible resolution on the subject obtainable in the Congress of the United States as it is now constituted. The Senator from Indiana deserves the thanks of the American people for the fact that he was willing to change the ingredients of the broth in order to appease a multitude of different cooks who had different recipes for it, including myself.

Mr. BAYH. I thank the Senator from North Carolina. I have said, and I say again, that we are greatly indebted to him for his "seasoning" and his willingness to compromise. Although there were many cooks, we had a paddle large enough so that we could all get our hands on it and stir. The conference report is the composite of the efforts of many different people.

I should like to conclude with one last thought. We know that over the great Archives Building downtown there is a statement engraved in stone. I do not know whether it is Indiana limestone, but standing out in bold letters is the statement: "What is past is prolog."

I cannot help but feel that history has been trying to tell us something.

There was a time in the history of this great Nation when carrier pigeons were the fastest means of communication and the Army was rolling on horse-drawn caissons. Perhaps it did not make any difference then whether the Nation had a President who was not able at all times to fulfill all the duties and powers of his office. But today, with the awesome power at our disposal, when armies can be moved half way around the world in a matter of hours, and when it is possible actually to destroy civilization in a matter of minutes, it is high time that we listened to history and make absolutely certain that there will be a President of the United States at all times, a President who has complete control and will be able to perform all the powers and duties of his office.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. BAYH. I yield.

Mr. JAVITS. The Senator has made an excellent argument and the right argument, concerning the effect the amendment will have in a situation of preparation for the use of executive power.

Is it not true that, with the greatest respect for the opponents of what the Senator is trying to do, it is assumed that the people will do their duty by approving the amendment through their State legislatures, but that we will not implement it in such a way as to indicate that we are not the approving power? It is one thing to say that some Vice President or President may misuse power. But we are passing the amendment. Is it not logical for us to count on ourselves to implement it effectively?

We can resolve every doubt. We have complete power to resolve every doubt by legislation that will give exclusive power to the Cabinet or to the other body.

Mr. BAYH. I agree with the Senator from New York. The main authority behind the entire legislation—in fact, behind the enactment of any legislation—is the ability of men and women in Congress and in the executive branch to act with reason. If a time comes in the history of our Nation when Senators and Representatives and Presidents are despots, our entire democratic system will be in jeopardy. I, for one, am willing to place in my successors the faith that has been placed in us today. Can we doubt that future Senators and Representatives will fulfill the responsibility that inheres in the holding of high trust and office?

Mr. JAVITS. If Congress were to soldier on the people in any such way as some might fear, we could sit on our hands with respect to appropriations; we would not have to declare war; there would be plenty of ways in which to sabotage the United States.

The PRESIDING OFFICER. The time of the Senator from Indiana has expired.

Mr. COOPER. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Who yields time?

Mr. GORE. I yield 1 minute to the Senator from Kentucky.

Mr. COOPER. I do not wish to haggle over the meaning of the amendment, but the Senator from Tennessee asked one question which I think has not been answered.

We want to establish this body, because if we did not think it necessary and did not believe that at some point the Cabinet might not declare the President disabled, when he actually was disabled, there would not be any point in wishing to establish a second body.

The Senator from Tennessee asked the question: Assuming that Congress establishes this body, and Congress says it has exclusive jurisdiction——

The PRESIDING OFFICER. The time of the Senator from Kentucky has expired. Who yields time?

Mr. BAYH. I shall be glad to yield time.

The PRESIDING OFFICER. The time of the Senator from Indiana has expired.

Mr. GORE. I have only 3 minutes remaining. I wanted to close; however, I ask unanimous consent that the Senator from Kentucky have 5 minutes to discuss this question.

Mr. COOPER. I do not need 5 minutes.

Mr. GORE. I yield 1 minute of my remaining time to the Senator from Kentucky.

Mr. COOPER. The Senator from Tennessee made the point that since this is a constitutional amendment, Congress cannot take away the power given to the Cabinet by legislative enactment. He asks: If Congress should establish this body and give it exclusivity, would that have any force against the amendment itself, which provides that the power shall lie either in the Cabinet or in the body itself?

Mr. JAVITS. It is my considered judgment—and I am the one who debated this point—that Congress, having the power to establish the body, can give it exclusivity which will stand up as a matter of constitutional law.

The PRESIDING OFFICER. The time yielded by the Senator from Tennessee to the Senator from Kentucky has expired. The Senator from Tennessee has 2 minutes remaining.

Mr. BAYH. We have made the record abundantly clear.

Mr. GORE. The distinguished Senator from Kentucky has just said that a question I raised has not been answered.

The distinguished Senator from Ohio asked if this question was raised in conference. The answer was that it was not. It was not raised on the floor of either House.

Mr. BAYH. That was not the question.

Mr. GORE. The Senator from Ohio asked a question, about use of the disjunctive.

I say that the proposed amendment creates grave doubt. I should like to read from the record of the debate of last Wednesday, June 30:

Mr. GORE. Do I correctly understand the able Senator to say that Congress could, immediately upon adoption of this constitutional amendment, provide by law for such a body as herein specified and that, then, either a majority of this body created by law or a majority of the Cabinet could perform this function?

Mr. BAYH. No. The Cabinet has the primary responsibility. If it is replaced by Congress with another body, the Cabinet loses the responsibility, and it rests solely in the other body.

Mr. GORE. But the amendment does not so provide.

Mr. BAYH. Yes, it does. It states——

Mr. GORE. The word is "or."

Mr. BAYH. It says "or." It does not say "both." "Or such other body as Congress may by law prescribe."

I suggest, Mr. President, that we have time to correct this doubt. Let us return the report to conference; let it be clarified.

The PRESIDING OFFICER (Mr. HARRIS in the chair). All time has expired. The question is on agreeing to the conference report. [Putting the question.]

Mr. GORE. The majority leader announced that there would be a yea-and-nay vote.

Mr. BAYH. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from North Carolina will state it.

Mr. ERVIN. What is the question before the Senate?

The PRESIDING OFFICER. The question is on agreeing to the conference report on Senate Joint Resolution 1.

Mr. DIRKSEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Illinois will state it.

Mr. DIRKSEN. Do I correctly understand that notwithstanding that the vote is on the conference report, a two-thirds majority is required for its adoption?

The PRESIDING OFFICER. The Senator from Illinois is correct. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LONG of Louisiana. I announce that the Senator from New Mexico [Mr. ANDERSON], the Senator from Nevada [Mr. BIBLE], the Senator from Nevada [Mr. CANNON], the Senator from Louisiana [Mr. ELLENDER], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from North Carolina [Mr. JORDAN], the Senator from Missouri [Mr. LONG], the Senator from Washington [Mr. MAGNUSON], the Senator from Montana [Mr. MANSFIELD], the Senator from New Mexico [Mr. MONTOYA], the Senator from Oregon [Mr. MORSE], the Senator from West Virginia [Mr. RANDOLPH], and the Senator from Oregon [Mrs. NEUBERGER] are absent on official business.

I also announce that the Senator from Alaska [Mr. BARTLETT], the Senator from Virginia [Mr. BYRD], the Senator from Mississippi [Mr. EASTLAND], and the Senator from Indiana [Mr. HARTKE] are necessarily absent.

I further announce that, if present and voting, the Senator from Nevada [Mr. BIBLE], the Senator from North Carolina [Mr. JORDAN], the Senator from Oregon [Mr. MORSE], and the Senator from West Virginia [Mr. RANDOLPH] would each vote "yea."

On this vote, the Senator from Mississippi [Mr. EASTLAND] and the Senator from Nebraska [Mr. HRUSKA] are paired with the Senator from New Mexico [Mr. ANDERSON]. If present and voting, the Senator from Mississippi would vote "yea," the Senator from Nebraska would vote "yea," and the Senator from New Mexico would vote "nay."

On this vote, the Senator from Nevada [Mr. CANNON] and the Senator from Louisiana [Mr. ELLENDER] are paired with the Senator from Washington [Mr. MAGNUSON]. If present and voting, the Senator from Nevada would vote "yea," and the Senator from Louisiana would vote "yea," and the Senator from Washington would vote "nay."

On this vote, the Senator from Indiana [Mr. HARTKE] and the Senator from Montana [Mr. MANSFIELD] are paired with the Senator from New Mexico [Mr. MONTOYA]. If present and voting, the Senator from Indiana would vote "yea," the Senator from Montana would vote "yea," and the Senator from New Mexico would vote "nay."

Mr. KUCHEL. I announce that the Senator from Vermont [Mr. AIKEN], the Senator from Colorado [Mr. DOMINICK], the Senator from Nebraska [Mr. HRUSKA], and the Senator from California [Mr. MURPHY] are absent on official business.

The Senator from Utah [Mr. BENNETT], the Senator from Kansas [Mr. CARLSON], the Senator from New Hampshire [Mr. COTTON], the Senator from Hawaii [Mr. FONG], the Senator from Massachusetts [Mr. SALTONSTALL], and the Senator from Wyoming [Mr. SIMPSON] are necessarily absent.

If present and voting, the Senator from Vermont [Mr. AIKEN], the Senator from Utah [Mr. BENNETT], the Senator from Colorado [Mr. DOMINICK], the Senator from Hawaii [Mr. FONG], the Senator from California [Mr. MURPHY], the Senator from Massachusetts [Mr. SALTONSTALL], and the Senator from Wyoming [Mr. SIMPSON] would each vote "yea."

On this vote, the Senator from Nebraska [Mr. HRUSKA] and the Senator from Mississippi [Mr. EASTLAND] are paired with the Senator from New Mexico [Mr. ANDERSON]. If present and voting, the Senator from Nebraska and the Senator from Mississippi would each vote "yea," and the Senator from New Mexico would vote "nay."

The yeas and nays resulted—yeas 68, nays 5, as follows:

[No. 164 Leg.]

YEAS—68

Allott	Cooper	Hayden
Bass	Curtis	Hickenlooper
Bayh	Dirksen	Hill
Boggs	Dodd	Holland
Brewster	Douglas	Inouye
Burdick	Ervin	Jackson
Byrd, W. Va.	Fannin	Javits
Case	Gruening	Jordan, Idaho
Church	Harris	Kennedy, Mass.
Clark	Hart	Kennedy, N.Y.

Kuchel	Muskie	Smith
Long, La.	Nelson	Sparkman
McClellan	Pastore	Stennis
McGee	Pearson	Symington
McGovern	Pell	Talmadge
McIntyre	Prouty	Thurmond
McNamara	Proxmire	Tydings
Metcalf	Ribicoff	Williams, N.J.
Miller	Robertson	Williams, Del.
Monroney	Russell, S.C.	Yarborough
Morton	Russell, Ga.	Young, N. Dak.
Moss	Scott	Young, Ohio
Mundt	Smathers	

NAYS—5

Gore	McCarthy	Tower
Lausche	Mondale	

NOT VOTING—27

Aiken	Dominick	Magnuson
Anderson	Eastland	Mansfield
Bartlett	Ellender	Montoya
Bennett	Fong	Morse
Bible	Fulbright	Murphy
Byrd, Va.	Hartke	Neuberger
Cannon	Hruska	Randolph
Carlson	Jordan, N.C.	Saltonstall
Cotton	Long, Mo.	Simpson

The PRESIDING OFFICER. On this vote, the yeas are 68, the nays 5. Two-thirds of the Senators present and voting having voted in the affirmative, the conference report is agreed to.

Mr. BAYH. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. KUCHEL. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HAGUE PROTOCOL TO WARSAW CONVENTION IS DETRIMENTAL TO INTERNATIONAL AIR PASSENGERS' RIGHTS AND SHOULD NOT BE RATIFIED

Mr. YARBOROUGH. Mr. President, I greatly regret to see now pending on our Executive Calendar the question of ratification of the Hague Protocol. This protocol has been pending before the Senate since the 86th Congress' 1st session, without being reported to the Senate by the Foreign Relations Committee for ratification or rejection, and I think the reasons are very strong that a little further delay will be beneficial for protecting the rights of American air passengers on international flights.

Although under American common law a person injured by another's negligence can recover his full damages, this Hague Protocol limits an international air carrier's responsibility to its injured passengers to $16,600. Under the existing Warsaw Convention, although there is a stated limit of $8,300, testimony before the Senate Foreign Relations Committee indicates that most cases can be settled for more than the $16,600 limits of Hague. And the Hague Protocol closes the doors by which injured passengers can avoid being limited in the damages they receive.

No one contends that $16,600 is an adequate amount to compensate for serious injuries or death to an air passenger. The State Department recommends ratification of this Hague Protocol only if companion legislation is enacted requiring an additional $50,000 in accident insurance on each international air passenger on a U.S. airline. That legislation is pending before the Senate Commerce Committee, but who can predict when or if it will be enacted?

In summary, an American injured on an international flight now can probably receive more than $16,600 in settlement of his claim. If S. 2032, is enacted, he can be assured of $50,000 in an accident policy. But if we should ratify the Hague Protocol now without waiting for that legislation, American air passengers will be limited to $16,600 or less in their claims for death or injury.

The New York Times has recently spoken out against the folly of ratifying the Hague Protocol in a well-reasoned editorial. I quote from their conclusion:

The glaring shortcomings in the Hague Protocol and in the insurance plan to strengthen it argue for their rejection even if it means the end of the Warsaw Convention. The treaty had justification in the early days of air transport, when airlines could have been put out of business by sizable damage suits. It is unjustified now that airlines are financially sound and furnish uniform documentation in normal course; yet the administration is seeking to reaffirm allegiance to its outdated and miserly provisions for passenger protection.

I ask unanimous consent that the complete text of the editorial, "Protection in the Air," from the June 16, 1965, New York Times be printed at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

PROTECTION IN THE AIR

Passengers on international airline flights involved in an accident have since 1934 been covered by the Warsaw Convention, which provides a unified liability code and uniform documentation on tickets and cargo for international air carriers. Under its antiquated provisions liability for loss of life or injury is limited to only $8,300, except where willful misconduct is proved. Recognizing that this amount is wholly inadequate, the signatories have proposed an amendment, called the Hague Protocol, to double airline liability to $16,600—which still would be wholly inadequate.

But the State Department is pressing for approval of the Hague Protocol along with a plan for compulsory accident insurance that would furnish passengers on American airliners up to $50,000 in case of injury or death. Leonard C. Meeker, the State Department's legal adviser, warned the Senate Committee on Foreign Relations that if it rejects the Hague Protocol "we would have to give serious consideration to denunciation of the Warsaw Convention," and if the compulsory insurance scheme is not approved "we would then also have to consider whether to withdraw from the Warsaw Convention."

Even with the insurance benefit added to the Hague Protocol's proposed ceiling, airline passengers will be shortchanged. Personal injury insurance in the United States provides compensation proportionate to the injury sustained, so that the family of an executive who dies in the prime of life usually gets more than the survivors of a retired person. But the administration's scheme would substitute a fixed amount, which is contrary to American principle and unfair in practice, and would not guarantee protection to Americans traveling on foreign airliners. Moreover, the Hague Protocol introduces language so rigid that it would become vastly more difficult for passengers—or their estates—to recover damages beyond the $16,600 limit.

The glaring shortcomings in the Hague Protocol and in the insurance plan to strengthen it argue for their rejection even if it means the end of the Warsaw Convention. The treaty had justification in the early days of air transport, when airlines could have been put out of business by sizable damage suits. It is unjustified now that airlines are financially sound and furnish uniform documentation in normal course; yet the administration is seeking to reaffirm allegiance to its outdated and miserly provisions for passenger protection.

FEDERAL CIGARETTE LABELING AND ADVERTISING ACT—CONFERENCE REPORT

Mr. McGEE. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 559) to regulate the labeling of cigarettes, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The legislative clerk read the report.

(For conference report, see House proceedings of July 1, 1965, p. 14952, CONGRESSIONAL RECORD.)

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. McGEE. I am glad to yield.

Mr. CLARK. I would like to have the Senator from Wyoming give us a brief explanation of what the conferees did about the cigarette problem. There were a number of us in the Senate who supported the position of the Senator from Oregon, who, unfortunately, cannot be present this afternoon, and who are very much opposed to the provision that for 3 years the Congress undertake to prohibit the Federal Trade Commission from issuing regulations with respect to the advertising of cigarettes. We were defeated, to be sure—I think unwisely—but that is the way it goes.

I should like to know just what is in the conference report.

Mr. McGEE. The conferees agreed on a moratorium for 3½ years from the effective date. The conference report was a unanimous report. The Senate version of the bill generally prevails.

Mr. CLARK. Will the Senator yield further?

Mr. McGEE. I yield.

Mr. CLARK. It is my understanding, as a practical matter, that the conference report which the Senator from Wyoming brings before the Senate is in substance the Senate bill, except as to the time during which the Federal Trade Commission is prohibited from doing anything to prevent what seem to me to be the iniquitous practices in the advertising of the cigarette industry, which, however, the industry does not admit to engaging in. It is not true that the moratorium is a victory for Madison Avenue which will permit it to do what it wishes in this field for 3½ years?

Mr. McGEE. I would say only that we agreed to a 3½-year moratorium, and would not care to add the embellishments which the Senator has seen fit to do.

Mr. CLARK. Am I correct in stating that in the House version of the bill the Federal Trade Commission would have